



Joint Legislative Audit Committee
Office of the Auditor General



IMPROVEMENTS NEEDED IN CONTROLLING CONTRACTS AWARDED BY THE CALIFORNIA ENERGY COMMISSION

From fiscal year 1974-75 through 1977-78, the California Energy Commission spent about \$20 million on contracts--42 percent of its total budget for that period.

The Commission has inadequately complied with mandates of the California Government Code and directives of the State Administrative Manual regarding contract management.

Specifically, the Commission has:

- Awarded sole source contracts without adequate justification
- Allowed some contractors to initiate and complete contracted work prior to control agency approval
- Failed to prepare and file evaluations on contractor performance
- Improperly purchased personnel services from outside the civil service system
- Failed to develop methods for keeping records.

We recommend the Commission develop stronger contract controls and provide training to contract managers.

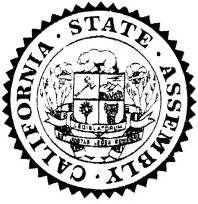
**REPORT TO THE
CALIFORNIA LEGISLATURE**

REPORT OF THE
OFFICE OF THE AUDITOR GENERAL
TO THE
JOINT LEGISLATIVE AUDIT COMMITTEE

814.2

IMPROVEMENTS NEEDED IN
CONTROLLING CONTRACTS
AWARDED BY THE
CALIFORNIA ENERGY COMMISSION

DECEMBER 1978



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The Honorable Speaker of the Assembly
The Honorable President pro Tempore of the Senate
The Honorable Members of the Senate and the
Assembly of the Legislature of California

Members of the Legislature:

Your Joint Legislative Audit Committee respectfully submits the Auditor General's report on the California Energy Commission's system of contract management.

The report identifies specific contract management system problems in that the Commission has (1) awarded sole source contracts without adequate justification, (2) allowed some contractors to initiate and complete contracted work prior to control agency approval, (3) failed to prepare and file evaluations of contractor performance, (4) improperly purchased personnel services from sources other than the state civil service system and (5) failed to develop methods for maintaining contract records.

The Auditor General makes specific recommendations to correct these deficiencies, and the California Energy Commission has stated "Every recommendation in your report has been implemented."

The auditors are Harold L. Turner, Audit Manager; Richard C. Mahan; Kathleen A. Herdell; Peter A. Wolfe; and Edwin H. Shepherd.

Sincerely,

RICHARD ROBINSON
Assemblyman, 72nd District
Chairman, Joint Legislative
Audit Committee

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SUMMARY

Since its formation, the State Energy Resources Conservation and Development Commission (Commission) has awarded approximately 1,000 contracts for research, demonstration projects, public education, technical assessment and expert testimony that it determined could not be accomplished by Commission staff. From fiscal year 1974-75 through 1977-78, the Commission spent about \$20 million on contracts--42 percent of its total budget for that period. Approximately 29 percent of the contracts were awarded without competition.

While the Commission has established contract management procedures, staff responsible for processing and managing contracts have inadequately complied with mandates of the California Government Code and directives of the State Administrative Manual. Specifically, the Commission has (1) awarded sole source contracts without adequate justification, (2) allowed some contractors to initiate and complete contracted work prior to control agency approval, (3) failed to prepare and file evaluations of contractor performance, (4) improperly purchased personnel services from sources other than the state civil service system and (5) failed to develop methods for keeping contract records.

Contract management has been inadequate because:

- Contract procedures are inconsistent and inadequate (see page 7)
- Contract managers have not received adequate training (see page 23).

We recommend the Commission (1) develop and implement an official contract manual, (2) develop a contract management system that identifies clear roles and lines of authority, (3) develop a uniform system of record keeping, (4) provide the Administrative Services Division's Contracts Office greater administrative responsibility for contract management, (5) develop contract manager training programs and (6) develop a contract payment certification process.

During the course of the audit, we briefed the Commission on our tentative conclusions and recommendations. In response to our comments and its own concerns, the Commission established a Contract Management Task Force which is considering implementing many of our recommendations.

INTRODUCTION

In response to a resolution of the Joint Legislative Audit Committee, we have conducted an audit of the State Energy Resources Conservation and Development Commission's (Commission) management of contracts awarded to private firms and other government organizations. The audit was conducted under the authority vested in the Auditor General by Section 10527 of the Government Code. This is the second of two reports concerning the Commission's operations.*

The Commission, which consists of five members appointed by the Governor, is the central state organization responsible for planning and regulating electrical energy consumption. Under California statutes, the Commission is responsible for ensuring a reliable supply of electrical energy to protect public health and safety, promote general welfare and protect environmental quality. Specifically, the statutes provide the Commission regulatory and planning powers and duties which include (1) development of energy conservation regulations, (2) assessment of electrical supply and demand projections, (3) certification of electrical power facilities and sites, (4) coordinated planning for actions to relieve energy shortages, (5) development of contingency plans for potential electrical energy shortages and (6) coordination and development of energy research and development programs.

* 814.1 Improvements Needed in Planning and Monitoring Research and Development of Alternative Energy Sources, November 1978.

To implement its programs during fiscal year 1978-79, the Commission has budgeted approximately \$25 million and 536 staff years. The Commission funds the majority of its programs through a surcharge based on kilowatt hours of electricity sold in California. (A surcharge of up to two-tenths of a mill per kilowatt hour is allowable.) The rate structure results in larger financial contributions from those who consume the most energy. Commission budgets since fiscal year 1975-76 have been as follows:

<u>Source of Funds</u>	<u>Actual Budget</u>				<u>Estimated Budget</u>
	<u>FY 1974-75</u>	<u>FY 1975-76</u>	<u>FY 1976-77</u>	<u>FY 1977-78</u>	<u>FY 1978-79</u>
State	\$1,129,942	\$10,516,043	\$14,477,106	\$17,074,477	\$19,032,582
Federal	-	41,070	982,439	2,923,995	4,707,090
Reimbursable	-	-	49,453	190,984	1,493,544
TOTAL	<u>\$1,129,942</u>	<u>\$10,557,113</u>	<u>\$15,508,998</u>	<u>\$20,189,456</u>	<u>\$25,233,216</u>
Personnel Years	18	200	342	489	536

BACKGROUND

Section 25218 of the Public Resources Code enables the Commission to enter into professional services contracts as necessary. To date, the Commission has encumbered approximately \$20,060,000 for professional services contracts and interagency agreements for work that it determined could not be accomplished by Commission staff, including contracts for research and demonstration projects, expert testimony and public education (Appendices B and C). Between fiscal years 1974-75 and 1977-78, the Commission spent 42 percent of its total budget on contracts for services.

ACTUAL TOTAL ENCUMBERED FUNDS
FOR PERSONAL SERVICES CONTRACTS
SINCE 1974-75*

<u>Fiscal Year</u>	<u>Total Encumbered Funds</u>	<u>Number of Contracts</u>
1974-75	\$ 665,219	13
1975-76	7,061,435	207
1976-77	7,588,075	412
1977-78	<u>4,752,943</u>	<u>337</u>
TOTAL	<u>\$20,067,672</u>	<u>969</u>

*Includes expert witness contracts. 1977-78 includes contracts through June 30, 1978.

The Executive Director of the Commission is responsible for staff functions. The Administrative Services Division (ASD) is one of five divisions under the Executive Office and is responsible for the administration of contract management. Specifically, contract management encompasses the identification of contract needs, development of contracts within state guidelines, processing and approval of proposed contracts, monitoring of active contracts and receipt of useful products. The Administrative Services Division is responsible for reviewing and processing all contracts awarded by the Commission (Appendices D and E). Most contract management activities, however, rest with line division staff whose primary functions are to provide technical support to the Commission's ongoing energy programs.

Scope of Audit

Our audit emphasis was on reviewing the efficiency and effectiveness of the Commission's contract management. We documented and analyzed the existing Commission contract management process and compared it to State Administrative Manual procedures and other types of comparative contract management criteria. To evaluate the effectiveness of the Commission's contract management, we conducted (1) a computer analysis of contracts awarded by the Commission since its creation and (2) a contract case study analysis. We reviewed contract files, accounting records and contract products for compliance with contract procedures, effectiveness and economy. Additionally, we administered a questionnaire to several contract managers. Appendices B through G provide general information on Commission contracts.

In an agreement made with Commission executive management, the Auditor General will provide the Commission access to the data base we have developed on Commission contracts. The data base will provide the Commission's Administrative Services Division with a management information tool with which to correct current deficiencies and monitor future contracts.

AUDIT RESULTS

NEED FOR INCREASED CONTROL OF CONTRACT MANAGEMENT

The State Energy Resources Conservation and Development Commission (Commission) has not complied with certain sections of the California Government Code or implemented directives provided by the State Administrative Manual (SAM) regarding the award and management of certain contracts. Specifically, the Commission has (1) awarded sole source contracts without adequate justification, (2) allowed contractors to initiate and complete contracted work prior to control agency approval, (3) failed to prepare and file evaluations of contractor performance and (4) improperly obtained personnel services from sources other than the state civil service system. Additionally, inadequate control of some contracts has resulted in products with limited usefulness and inefficient use of state resources.

Contract management has been inadequate because:

- Contract procedures are inconsistent and inadequate
- Contract managers have not received adequate training.

Contract Procedures Are Inconsistent and Inadequate

Contract processing has been inconsistent because the Commission lacks adequate contract management controls. The Commission does not use a current, comprehensive contract manual.

Specifically, the Commission lacks sufficient procedures for controlling and monitoring contractor selection, evaluating contracts and authorizing final payments.

The Administrative Services Division (ASD) is responsible for developing contract management procedures and monitoring their implementation. In 1976, the Commission adopted an official contract manual which outlined (1) the criteria for use of various types of contracts; (2) the various responsibilities of line divisions and staff; (3) the policies regarding contract negotiations, payments and evaluations; and (4) the general contract preparation procedures.

However, according to ASD management and based on our observation, certain procedures outlined in the 1976 contract manual have not been consistently followed and others are no longer used by the Commission. In an attempt to clarify the 1976 contract manual procedures and facilitate their implementation, ASD drafted and distributed in December 1977 an administrative memorandum outlining a revised contract process. In March 1978, ASD attempted to further clarify the process by drafting a proposed contract manual. ASD instructed divisions to follow the memorandum and distributed the draft manual for comments only. However, contract managers follow procedures outlined in each of the three guidelines. Confusion over contract procedures was exemplified when in September 1978, a line division developed its own contract manual.

In addition to not providing staff with a current, comprehensive contract manual, ASD has not established adequate controls to ensure consistent and proper implementation of contract procedures. Neither manual comprehensively describes ASD's role and responsibilities in processing and controlling contracts. While ASD's contract coordinator's responsibilities are discussed in various sections of the manuals, systems for monitoring and controlling contracts are not addressed. Controls such as monitoring of contract evaluation preparation, payment authorizations and post audits have not been adequately defined in the manuals. Additionally, development and use of bidders lists and ASD authority to reject contracting decisions made by line division staff are not addressed in the manuals.

Conversely, the U.S. Department of Energy (DOE) controls contract proposal, approval and processing by centralizing responsibilities within its Procurement Division. While line divisions within DOE identify the need for a contract and develop contract specifications, the Procurement Division assumes responsibility for coordinating advertising, evaluating proposals, selecting contractors and processing contracts. According to the Acting Deputy Director of DOE's Procurement Division, control of contract management is facilitated by a centralization of responsibilities and a clear definition of procedures.

Noncompliance with the
California Government Code

As a result of inconsistent and insufficient contract procedures, the Commission has not adequately complied with various sections of the state Government Code.

Section 14615 of the Government Code provides the Department of General Services general powers of supervision over matters concerning the financial and business policies of the State. Section 14780, et seq., provides that all contracts be transmitted to the Department of General Services for approval, although it may grant review exemptions for certain transactions. To meet its responsibilities in reviewing contracts, the Department of General Services developed general policies that are outlined within the State Administrative Manual (SAM).

The Commission is not complying with seven sections of SAM which require (1) receipt of competitive bids and contractor proposals, (2) commencement of work after control agency approval, (3) preparation of contract evaluations by contract managers and (4) development and maintenance of proper records. Additionally, the Commission has not complied with the State Civil Service Act (commencing with Section 18500 of the Government Code) which requires use of the merit system--rather than personnel service contracts--for temporary staff augmentations.

Competitive Process and Consultant Proposals: Sections 1213 and 1242 of SAM provide that at least three competitive bids or qualifying proposals be secured on all contracts awarded by state entities for professional services that could not be performed within the civil service system. SAM identifies methods to ensure competition. One method generally used for professional services contracts is to send a request for proposal (RFP)--a public request for proposals to provide a product--to prospective bidders. The Commission reinforces the importance of competition for contracts by stating that sole source contracts exempted from the competitive process should be rare. Both the Commission's 1976 manual and the 1978 draft manual state: "The Commission stresses competition for virtually all contracts." The 1976 manual explains the need for competition for the following reasons:

- "1. The cost can potentially be lower because of competition.
2. Comparison of proposals can lead to a potentially improved product."

Regardless of guidelines provided by SAM and the Commission contract manuals, the Commission has awarded the majority of its contracts on a sole source basis. Our review of documents within the Commission's contract files shows that 61 percent of the total number of contracts and 28 percent of the total contract dollars have been awarded sole source.* Only 12 percent of the contracts (31 percent of the dollars) have been awarded as a result of the RFP and competitive process.* The

* Excluding expert witness contracts.

following table summarizes the contracts awarded by the Commission since fiscal year 1974-75. (See Appendix A for additional information on contract types.)

TABLE 1
CONTRACTS AWARDED BY THE COMMISSION*
FISCAL YEARS 1974-75, 1975-76, 1976-77, 1977-78

<u>Contract Type</u>	<u>Total Contracts</u>	<u>Total Dollars Encumbered</u>
Sole Source	387 (61%)	\$ 5,365,000 (28%)
RFP	76 (12%)	5,888,000 (31%)
Interagency agreements	110 (17%)	5,535,000 (29%)
Other agency	<u>61 (10%)</u>	<u>2,403,000 (12%)</u>
Total	<u>634 (100%)</u>	<u>\$19,191,000 (100%)</u>

* Excluding expert witness contracts.

The State Administrative Manual provides for awarding contracts when three qualifying proposals cannot be obtained. However, an explanation or justification must be made that identifies attempts to obtain proposals and reasons why no bids were obtained. In addressing sole source contracts, the Commission contract manual states:

. . . it is necessary to establish to our own satisfaction and to the satisfaction of the control agencies, that there is only one person or firm with the ability to perform the required work. Time constraints, particularly when they are programmatic and not statutory, usually will not justify a sole source contract. Each sole source contract must be justified as an exception to the ordinary state policy.

Commission contract managers have inadequately and improperly justified the use of sole source contracts. Our analysis of all contract files revealed that only 60 percent of the sole source contract files included justifications (excludes expert witness contracts). Additionally, a case study review of 20 sole source contract files and discussion with contract managers identified only two contracts for which contract managers attempted to obtain at least three qualifying proposals.

At least two contract managers stated a preference for sole source contracts in order to avoid the time necessary for RFP processing. According to some staff estimates, preparation and award of an RFP by the Commission generally requires from two to six months, whereas sole source processing can be accomplished usually within one to two months.

The Commission also awards sole source contracts on the basis of an individual's technical expertise. However, while the individual may be an expert in a particular field, justifications do not always demonstrate that he or she is the only person able to perform the work. For example, in May 1978, the Commission awarded a \$3,775 contract to conduct a writing course for the Public Information Office. The contract was awarded sole source on the basis that the individual was both a professional writer and a former English teacher. Additionally, the justification stated that since the individual was familiar with the Commission's work and writing, he would provide "a unique and refreshing perspective on . . . writing problems." Currently, report writing courses are offered by the State Personnel Board's Personnel Development Center,

the Department of Water Resources and the U.S. Civil Service Commission. The Commission acknowledged the existence of these sources, but did not review them for relevance to their needs.

As stated in the Commission's contract manual, awarding contracts competitively could potentially reduce the cost of contracted work. We selected two sole source contracts to determine if the cost could have been reduced through competitive processes. Both contracts were awarded to private individuals or firms in which the justifications stated that no other contractor could perform the work within specified time constraints. In both instances, we identified other state agencies and private individuals that stated they could have performed the work specified within the contract terms for less than the original contract encumbrances.

To reduce time required to process competitive contracts and control the use of sole source contracts, the Commission developed the contract opportunity notice (CON) process. While the CON process does not replace an RFP, it may be used to verify a sole source justification, to alert prospective contractors of a forthcoming RFP as well as assist in making other contracting decisions. Generally, a notice is either circulated by advertisement or mailed to contractors from a bidders list.

Both the CON and the RFP processes, however, are dependent upon a current and categorized bidders list that reflects qualified individuals and firms. Currently, the Commission does not actively

advertise for bidders. ASD maintains a bidders list of approximately 1,400 contractors who have contacted the Commission and requested to receive information on contracts. However, because the Commission list is not categorized or periodically purged, RFPs are not always sent to the most appropriate firms.

Conversely, DOE's Procurement Division develops and maintains numerous bidders lists for advertising for RFPs. Periodically, the Division will advertise in energy-related journals for interested contractors to contact DOE to be placed on a bidders list. These contractors then receive RFPs for DOE contracts in their related field. If a contractor fails to submit any proposals during a two-year period, he is removed from the list. Maintenance and use of contract bidders lists helps ensure that RFPs are distributed to an adequate number of qualified contractors to receive a sufficient number of proposals for evaluation.

In at least one case, the Commission's bidders list failed to assist staff in selecting a qualified contractor. In 1976, the Commission selected three private bidders from its uncategorized bidders list to develop proposals for a contract to assess the current supply of oil, gas and uranium in California. Commission evaluation of the bidders' proposals indicated that the three firms had inadequate expertise to perform the work. The contract was eventually awarded to a federal laboratory.

Commencement of Work After Control Agency Approval: Section 14780 of the California Government Code requires and Section 1204 of SAM provides that certain contracts* be submitted to and approved by the State Personnel Board, the Department of General Services and the Department of Finance before contractors start work. The Commission has not complied with these provisions.

According to a Legislative Counsel opinion (see Appendix B), state contracts requiring control agency approval are not effective until approved by the Department of General Services. The opinion stated that the purpose of the approval is to protect the public from improvident or secret actions in public affairs. Consequently, the opinion states that contracts that are entered into without General Services' approval are void and cannot be enforced.

Our analysis of Commission contract files identified at least 9 contracts in which the term of the contract began prior to approval. In 44 cases, the contract product was received before the Executive Director of the Commission signed and authorized the contract.

According to the Chief of ASD, the Commission generally predates contracts. The effective date stated on the contract reflects the date that the Commissioners or the Executive Director approved the contract. This procedure does not indicate that a contractor necessarily

* Contracts requiring control agency approval are determined on the basis of established guidelines. In the event contracts are exempted from review by the Department of General Services, contracts are signed and authorized by an approved agency officer.

has begun work on a contract prior to control agency approval. Additionally, the Contracts Office informs contractors that the contracts are not effective until approved by the Department of General Services. However, predating a contract allows for payment to contractors for work performed on the contract between the agreement date stated on the contract and the date of control agency authorization.

In a review of Commission contracts conducted in May 1978, the State Personnel Board determined that only four percent of the Commission contracts were received for review prior to the initial date of the contract term. Table 2 summarizes Commission contracts received by the Board for review after the term of the contract began.

TABLE 2
NUMBER OF DAYS PAST THE INITIAL DATE
OF THE CONTRACT TERM THAT
CONTRACTS WERE RECEIVED BY SPB FOR REVIEW

<u>Days Past Initial Term</u>	<u>Number of Contracts</u>				<u>Percentage of total Contracts</u>
	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>Total</u>	
Received prior to initial term	5	4	6	15	4
1-30 days	33	138	34	205	50
31-60 days	35	43	18	96	23
Over 60 days	7	10	6	23	6
Full contract term completed	<u>20</u>	<u>37</u>	<u>11</u>	<u>68</u>	<u>17</u>
Total	<u>100</u>	<u>232</u>	<u>75</u>	<u>407</u>	<u>100</u>

Source: State Personnel Board (SPB).

The Department of General Services states that commencement of work prior to contract approval occurs in many state agencies. The Office of the Auditor General is currently conducting an audit of state procurement practices which will address this issue in greater detail.

Preparation of Contract Evaluations: Section 1218 of SAM states that the Department of General Services will act as a central repository of contract evaluations for contracts greater than \$7,000. These records are designed to serve as an overall performance record available for review prior to award of contracts. The Commission has expanded upon the SAM provision by requiring that contract managers complete an evaluation every time an invoice is presented by a contractor. Additionally, the Commission provides that evaluations be prepared prior to payment of final invoice. The Commission has not adequately complied with the above provisions.

ASD has not established a review system to monitor contract completions and preparation of evaluations. Although the Commission manual specifies that contract managers are responsible for preparation of contract evaluations, some contract managers are unaware of their responsibility to prepare evaluations. We interviewed 28 contract managers and found that 17 were unfamiliar with the SAM and Commission manual requirements. We reviewed contract evaluations prepared by Commission staff for contracts greater than \$7,000 and found that the Department of General Services had not received evaluations for approximately 99 percent of the closed contracts.

Between January and April 1978, the Commission Chairman's Office requested contract managers to prepare contract evaluations on certain contracts awarded by the Commission. Although these evaluations were not located in ASD Contracts Office records, we reviewed them and found that available evaluations represented only 43 percent of the contracts awarded by the Commission. Further, contract managers evaluated only 58 percent of the contracts greater than \$7,000, and only 38 percent of the contracts less than or equal to \$7,000.

Failure to prepare and review contract evaluations may result in improper payments to firms or individuals whose performance did not warrant full or final payments. Currently, contract managers are responsible for authorizing progress and final payments on contracts. Program or division chiefs are not required to review payment authorizations made by staff. With contract evaluations, the contract coordinator or the accounting office can question payment authorizations.

Our case study analysis identified contracts in which a contract manager authorized final payments to contractors who did not complete the terms of the contracts. In one case, the Commission awarded a \$21,540 contract to gather necessary data on the California Environmental Quality Act regulations and present recommendations for a geothermal power plant siting approval process. Though the contract specification required a written report, the only product was three briefings to Commission staff. Although the contract manager stated dissatisfaction with contractor performance, payment was made in full.

Review of contract evaluations also can help to ensure that state organizations are aware of contractors who have performed inadequately in the past. Commission procedures do not require a review of either Commission or Department of General Services evaluation files prior to contract award. Department of General Services personnel stated that the Commission has never requested information on a contractor's record of prior service. We identified at least eight contractors awarded contracts after receiving one or more unfavorable evaluations by other Commission contract managers. In one instance, the Commission awarded a private research firm 13 contracts after the firm had received an unfavorable evaluation. Two of these 13 contracts also received unfavorable evaluations.

Because the Commission is not complying with SAM and its own contract manual and does not require contract evaluations to be prepared and reviewed by contract managers, state funds may have been spent on products or services that have not met contract expectations.

Development and Maintenance of Proper Records: The State Records Management Act (commencing with Section 14740 of the Government Code) provides for the retention of state records. Section 1602 of SAM provides for state records for administrative, legal, fiscal, historical and research purposes. Specifically, SAM recommends record retention of standard agreement contracts and federal grants for at least two years from the end of the fiscal year in which the encumbrance was liquidated.

The Commission contract manuals do not have (1) guidelines for contract record keeping nor (2) standards that outline items to be retained for official contract records. Currently, divisions have assumed responsibility for most record keeping, although the ASD is responsible for maintaining central administrative files. Because the Commission has not developed standards for contract records, records currently kept by ASD and line divisions are incomplete and inadequate.

ASD maintains administrative contract records that include copies of contract request forms, signed contracts, Commission notifications and resolution forms and sole source justifications. In a computer review of all ASD contract records, we noted several deficiencies including missing contract files and forms and lack of an adequate numbering system.

Contracting for Work From Sources Other Than the Civil Service System: Section 18500(c) of the Government Code requires the development of a comprehensive personnel system for the state civil service. Furthermore, it states appointments shall be based on merit and fitness determined through practical and competitive examinations establishing employment lists of eligible individuals. The State Personnel Board may establish special employment lists for work requiring performance on an irregular or intermittent basis.

From fiscal years 1974-75 through 1977-78, the Commission paid approximately \$60,000 to two private firms for part-time clerical and secretarial services. The Commission never developed or approved a

formal contract for purchase of the services nor did it obtain approval from the State Personnel Board. Recently, the Commission requested the State Personnel Board to approve payment of \$20,221 in outstanding invoices for services purchased between July 1 and September 15, 1978. According to a State Personnel Board official, the Board questions the appropriateness of contracting for secretarial and clerical help when the work could be performed within the civil service system.

According to ASD management, temporary help would have been normally obtained from the Department of General Services' intermittent pool. However, the Department denied requests for help due to the unavailability of staff. As a result, the Commission decided to purchase the services through private temporary help firms. Payments were made by the Office of the Controller although the Commission did not process a contract.

Since fiscal year 1974-75, the Commission has encumbered the following amounts for these services:

<u>Fiscal Year</u>	<u>Amount Paid</u>	<u>Outstanding Invoices</u>	<u>Total Services Encumbered</u>
1974-75	\$ 184		\$ 184
1975-76	770		770
1976-77	5,900		5,900
1977-78	31,245		31,245
1978-79 (7/1/78 to 9/17/78)	288	<u>\$21,640</u>	<u>21,928</u>
TOTAL	<u>\$38,387</u>	<u>\$21,640</u>	<u>\$60,027</u>

Contract Managers Have Not Received Adequate Training

Increased control of contract management requires (1) establishment of clear and complete contract policies and procedures and (2) effective dissemination of the procedures to appropriate personnel. Since its inception, the Commission has awarded 969 contracts totaling more than \$20 million. At least one-third of the Commission's professional staff have been involved in managing those contracts.

However, the Commission has not adequately trained staff responsible for managing contracts. Only seven one-hour contract management training sessions have been conducted. ASD, the division responsible for Commission training programs, developed and presented the courses after line divisions requested training. The training sessions addressed three primary areas:

1. Work Statement--contract provisions and specificity of tasks
2. External Controls--requirements of State Personnel Board and Departments of Finance and General Services
3. Competitive Process--request for proposal (RFP) and contract opportunity notice (CON).

Contract managers state they need training. During the audit, we administered a questionnaire to 28 contract managers. Each stated they had not received any formal training in contract management. Further, 17 of these individuals indicated they had no or only a limited orientation to and awareness of Commission contract procedures and SAM.

The absence of adequate training and the subsequent lack of awareness of Commission contract policies and procedures has partially contributed to inadequate implementation of contract procedures and contract mismanagement. The following examples illustrate problems that exist when contract managers lack knowledge and understanding of procedures.

Contract A

The Commission awarded a contract to a local government to procure land leases or land lease options for property available for geothermal resource development. The contract terms provided prepayment of \$5,000 to be encumbered by the city between June 28, 1976 and June 30, 1978. To date the city has not completed the terms of the agreement and has not reimbursed the Commission for the allocation and earned interest. The contract manager stated that during the term of the contract, she received only four progress reports from the city, some of which were telephone reports. The city informed the contract manager during the term of the contract that leases of suitable property were pending property owner partnership dissolution. Because the dissolution was disputed, the city stated that the dissolution would be accomplished after a lengthy court process. Although it was apparent that the city was not able to lease available land, the contract manager did not recommend contract cancellation.

The contract manager stated that she received contract manager responsibility the first month of employment with the Commission. She did not receive any training and feels that her awareness of state and Commission contract management procedures has been limited to her work experience. She stated that without contract management training, she was unaware of options available to cancel the contract or recover the funds that were appropriated but not used for the intent of the contract.

Contract B

The Commission contracted with the Regents of the University of California to evaluate the feasibility of off-shore siting of nuclear reactors and related issues. The contract terms provided for the contractor to complete a three-month study and receive payment of \$4,995. The contract manager stated that the contractor did not produce the required product, although records indicate that the contract manager authorized full payment to the contractor.

The contract manager stated that she did not receive any training and knew very little of contract management roles and responsibilities. As an example, she stated she did not know that contract managers could refuse payment on contracts. She stated that if the Commission provided training to contract managers, this as well as other problems could be avoided.

Contract C

The Commission contracted with a private laboratory to produce a report addressing administrative requirements for Liquid Natural Gas (LNG) terminals and their potential hazards and development of a computer program. The contractor was also to address quality assurance, inspection and testing program requirements. The contract was encumbered for \$5,000 for a five-month term. The contract manager stated the contract product was submitted late. Additionally, the contract product required extensive Commission staff rewriting before the report could be used. Records indicate the contractor received full payment.

The contract manager on the LNG project stated that there were several problems with the project. Specifically, project negotiations were verbal rather than written. Additionally, the contract manager only provided technical input to the contractor and very little direction for a report format. As a result, the product was technically correct, but was submitted in an unusable format.

The contract manager stated that he had never received contract management training or direction from the Commission. He stated that contract managers are usually technical staff and do not have enough administrative expertise or understanding to avoid problem situations with contractors. He felt contract management training would provide him with ability to manage a contract.

CONCLUSION

Commission staff involved in contract processing and management have not consistently followed an approved set of contract policies and procedures. Procedures have been inconsistent because the Commission has at least three sets of contract procedures and lacks an adequate system for controlling contracts.

Additionally, the Commission has not adequately trained the staff responsible for managing contracts. Commission efforts to provide contract management training have been limited.

As a result of these problems, the Commission has not adequately complied with various sections of the California Government Code or implemented sections of the State Administrative Manual. Consequently, there have been instances in which state resources could have been used more efficiently and effectively.

RECOMMENDATION

Upon completing the audit, we presented our conclusions and recommendations to the Commission executive management. After review, the Commission management concurred with the recommendations shown below.

To improve the management of contracts awarded to private firms and other government organizations, we recommend that the Commission develop uniform systems and procedures for contract management. Specifically the Commission should:

1. Provide ASD with greater authority and administrative responsibility for contract processing. ASD should implement and monitor controls for:
 - Use of sole source contracts
 - Preparation of contract evaluations
 - Authorization of contract payments
 - Development, maintenance and use of bidders lists
 - Final approval of contracts by control agencies prior to initiation of work
 - Contracts for personnel services without the civil service system
 - Contract manager training
2. Develop and implement an official contract manual that specifies Commission contract policies and procedures to be used uniformly by all staff. The manual should include contract management procedures which ensure compliance with the California Government Code, State Administrative Manual and other rules and regulations pertaining to contract management

3. Develop procedures and contract management systems that identify clear lines of authority and responsibility for the development, award and monitoring of contracts. Specifically, the Commission should completely detail responsibilities for ASD, division chiefs, contract managers and other Commission offices with contracting functions to prevent duplication of staff efforts
4. Develop and maintain a central system of contract records within ASD. Such records should include but not be limited to (1) authorized contracts and relevant material, (2) correspondence, (3) progress reports and products and (4) evaluations. ASD should develop policies and procedures for contract record keeping within line divisions. Specifically, ASD should address location of files and contents
5. Develop a payment procedure which requires review of contract evaluations by a contract coordinator. Additionally, contract managers should certify that the contract was performed successfully or within the terms of the contract. A statement of certification as well as a signature by the contract manager should be included

6. Develop training programs for all contract managers prior to the assignment of contract management responsibilities. Training should include but not be limited to (1) rules and regulations, (2) systems and procedures and (3) monitoring techniques.

Corrective Action By The Commission

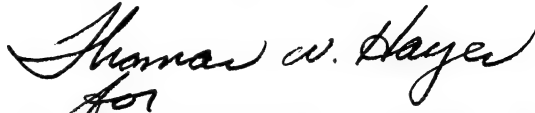
During the course of the audit, we periodically briefed the Commission management and staff on tentative conclusions and recommendations. Commission management concurred with our results and implemented a task force to study contract management problems prior to audit completion.

In November 1978, the task force issued new contract procedures and a contract manual. Specifically, the task force recommendations include implementing:

1. A uniform contract manual
2. Contract manager training programs
3. A contract tracking system
4. Central and permanent contract records within ASD
5. Greater documentation of contractor selection
6. Revision of the bidders list
7. Monthly progress reports
8. Contract evaluations
9. Payment authorization

The task force proposes that new contract procedures will reduce contract problems as well as improve staff contract management ability.

Respectfully submitted,

A handwritten signature in cursive script, reading "Thomas W. Hayes".

for
JOHN H. WILLIAMS
Auditor General

Date: December 19, 1978

Staff: Harold L. Turner, Audit Manager
Richard C. Mahan
Kathleen A. Herdell
Peter A. Wolfe

CALIFORNIA ENERGY COMMISSION

1111 HOWE AVENUE

SACRAMENTO, CALIFORNIA 95825

(916) 920-6103



December 18, 1978

Mr. John Williams
Auditor General
925 L St., Suite 750
Sacramento, CA 95814

Dear Mr. Williams:

I have carefully reviewed your report on the Energy Commission's contract management, and have developed the attached point by point response.

The Commission and I welcomed the arrival of your staff last February, and have appreciated the knowledge they brought to our contract management process. Your auditors arrived at the Commission at the same time I accepted the position of Executive Director. The Commission had given me and the rest of the new staff management team clear direction to improve our contracts process to match the changing needs and greater maturity of our programs. The presence of your auditors has helped me considerably in dealing with the problems that we acknowledge existed in this area. The external audit has helped us---as it would any business---make management and operating adjustments which have led to better control of our resources.

Every recommendation in your report has been implemented. Two of your recommendations, for instance, suggested a new manual of contract procedures and training our staff in contract management. That procedure manual has been issued, and within three days of its release, the staff responsible for over 75 percent of our current contract funds had gone through a training course developed for us by the state's Personnel Development Center. We have also implemented a new contract evaluation process which we think will be a model for other state agencies.

It is important to note that our Commissioners and I have never hesitated to refuse approval of any contract we did not feel met state standards. Your report should assist us in making better decisions about contract awards.

I do urge you to read the attached response, which points out reasons for some of the actions you have criticized.

Sincerely,

A handwritten signature in dark ink, appearing to read "James A. Walker".

JAMES A. WALKER
Executive Director

Attachment

RESPONSE TO THE REPORT OF THE AUDITOR GENERAL
ON ENERGY COMMISSION CONTRACT MANAGEMENT

DECEMBER 18, 1978

Criticism 1: The Commission needs increased control of contract management.

RESPONSE: In its almost four years of existence, the Energy Commission has been previously audited and reviewed by two Legislative Oversight Committees, the Department of Finance, the Legislative Analyst, the Auditor General, the federal Department of Energy and the former Federal Energy Administration. No irregularities of any kind were found. In fact, the Auditor General did not even report after his last review of Commission activities.

This Auditor General's report points to a number of specific contracts in which we have allegedly made errors in complying with state requirements. Each of these are small contracts. The auditor does not indicate that the Commission has repeatedly competently managed quarter and half million dollar contracts.

It is also important to note that the Commission has more checks and balances on its contract awards than any other state agency. Besides extensive internal review, all contracts over \$1,500 must be approved by the Commission in publicly noticed meetings, at which any person may query the staff, Commission and/or potential contractor before a vote is taken.

We follow all requirements for review by other state agencies. No Commission contract has ever been refused approval by the Department of General Services. In addition, every two months the Commission provides the Legislature with a listing of those contracts let in the previous two months, and those expected to be let in the upcoming two months.

We acknowledge the operating adjustments recommended by the Auditor General and implemented by the Energy Commission have improved our contract management.

Criticism 2: Contract procedures are inconsistent and inadequate.

RESPONSE: The operating adjustments suggested by the Auditor General were being formulated before the audit began, and have now been implemented.

The auditor feels the federal Department of Energy's totally centralized system is better than ours. We do not agree. By giving total contract award responsibility to management, fiscal and legal professionals, it removes from the process the technical experts who are most able to judge a contractor's qualifications, and who must work with the product.

Criticism 3: The Commission has not complied with the Government code in the following areas:

. Competitive Bidding

RESPONSE: The auditors determined that 28 percent of all contract dollars have been awarded on a sole source basis. Our analysis shows these contracts were justified. Many state agencies expend all sums up to \$3,000 on the basis of an invoice rather than a contract. The Commission has required contracts for these expenditures as an additional control measure. During the 1977-78 fiscal year, 54 percent of our sole source contracts were for less than \$3,000.

Two thirds of the sole source contracts let in Fiscal Year 1977-78 were for expert witnesses, travel and per diem for advisory committee members, and workshop participants.

Seventy-nine percent of the total dollar value of the remaining sole source contracts were reviewed and approved by General Services.

Our legal counsel in charge of contracts was a General Services employee for the first two years he advised us, then was hired by the Commission. He has always applied the same criteria for approval of a sole source contract as General Services does.

The auditors say that in contracting for development of a writing course for our staff, we did not check with other agencies already having courses, including the Department of Water Resources. In fact, we did discuss DWR's course with them, and reviewed their course, which was tailored to their needs. We felt we needed a similar program, designed specifically for energy. We paid the same rate for development of our course as DWR did for theirs.

. Commencing work after control agency approval

RESPONSE: In a few cases, primarily due to regulatory hearing needs, we began work before the lengthy contract approval process was complete. In no case has the Personnel Board denied a contract on which a contractor had already begun work; in no case was payment made before a final approval. The State Personnel Board says only four percent of our contracts are received for their approval prior to the date the parties came to an agreement. The Personnel Board has confused the date contracting parties came to an agreement with the work start-up date specified in the contract.

. Preparation of Contract Evaluations

RESPONSE: The auditors indicate the Commission is not complying with a requirement to send evaluations of all contracts over \$7,000 to the Department of General Services. General Services does not enforce this requirement, and has told us that they are considering dropping it from their administrative guidelines. A spot check of General Services' evaluation file showed that there were four evaluations for one contractor widely used in state service. Three of the evaluations were from the Energy Commission.

Also, we do not feel one negative evaluation should be the sole reason for rejecting a contractor.

The auditors say a contract for information on the California Environmental Quality Act was paid without receiving the required report. In fact, payment was withheld until a satisfactory product was delivered.

. Maintaining proper records

RESPONSE: We have changed our contract filing systems so that official files are kept in our Administrative Division, where the auditors expected to find them. In many cases, the official files were in other Commission offices.

Contracting for work outside the civil service system

RESPONSE: The auditors point out that the Commission paid two private firms for part time clerical work. We used the private firms because clerical pools provided by the Department of General Services were unable to provide us with needed support. Several other state agencies did the same and were surprised by a September 1978 ruling by the State Controller that this was not proper. We stopped using the services when the Controller identified the problem.

Criticism 4: Contract Managers have not received adequate training.

RESPONSE: The Commission agrees that our personnel should have had more thorough training in contract management. To date, managers responsible for 75 percent of our contract funds have been trained in a course conducted for us by the state's Personnel Development Center. The rest, and other employees who may manage future contracts, will go through the training over the next few months. No member of our staff will be allowed to manage a contract until s/he has obtained certification through this class.

The auditors used three examples of contracts in which they felt training would have resulted in better management. One is a contract with a city for geothermal development, in which there was prepayment of \$5,000. The contractor did not perform, and the auditor criticises the Commission for not having the funds returned. Our documentation shows beginning in December 1977, the Commission requested return of the money, which has since been accomplished. The return of the interest is still at issue, but latest indications are that it will be obtained shortly.

In another example, the auditors say an incomplete product was submitted from a laboratory doing work on LNG safety standards. Our staff manager feels the contractor met the terms of the contract. The contractor report was rewritten so that it could be combined into one with those of several other contractors. This is a common occurrence, especially for large, technical projects with short timelines.

Auditors Recommendations:

RESPONSE: Every recommendation has been implemented:

Administrative reorganization has given our Administrative Services Division additional staff and authority to control contract management.

An official contract manual has been developed and promulgated.

Contract management responsibilities of each part of the institution have been outlined in the contract manual.

A central records system has been established. Each file will include the contract request memo, any other information needed to process the contract, the contract, documentation of the contractor selection process, interim and final contract reports, a contract evaluation, a contractor evaluation, and correspondence. Our Accounting Office will maintain approval invoices, the accounting ledger, and all correspondence concerning payment.

TOTAL NUMBER OF CONTRACTS AND DOLLARS ENCUMBERED
BY SERCDC FOR FISCAL YEARS 1974-75, 1975-76, 1976-77, 1977-78*

	Fiscal Years				1977-78	Total Contract Awards	Percentage of Total Contract Awards
	1974-75	1975-76	1976-77				
A. Total SERCDC Contract Awards							
1. Sole Source Contracts							
a. Total dollars encumbered	\$ 68,526	\$1,490,350	\$2,357,239	\$1,990,887	\$5,907,002	29%	
b. Total number of contracts	6	112	327	258	703	72	
2. Request for Proposal Contracts							
a. Total dollars encumbered	543,712	2,454,591	2,316,012	573,558	5,887,873	29	
b. Total number of contracts	3	38	25	10	76	8	
3. Interagency Agreements							
a. Total dollars encumbered	52,981	1,547,657	2,111,654	1,890,113	5,602,405	28	
b. Total number of contracts	4	33	37	43	117	12	
4. Other Agency Agreements							
a. Total dollars encumbered	-0-	1,568,837	803,170	298,385	2,670,392	14	
b. Total number of contracts	-	22	25	26	73	8	
5. Total Dollars Encumbered	\$665,219	\$7,061,435	\$7,588,075	\$4,752,943	\$20,067,672	100%	
6. Total Number of Contracts	13	205	414	337	969	100%	
B. Total Contract Awards Excluding Expert Witness Contracts							
1. Sole Source Contracts							
a. Total dollars encumbered	\$68,526	\$1,427,325	\$1,966,958	\$1,902,584	\$5,365,393	28%	
b. Total number of contracts	6	67	134	180	387	61	
2. Request for Proposal Contracts							
a. Total dollars encumbered	543,712	2,454,591	2,316,012	573,558	5,887,873	31	
b. Total number of contracts	3	38	25	10	76	12	
3. Interagency Agreements							
a. Total dollars encumbered	52,981	1,547,657	2,094,154	1,840,553	5,535,345	29	
b. Total number of contracts	4	33	35	38	110	17	
4. Other Agency Agreements							
a. Total dollars encumbered	-0-	1,568,837	601,395	233,090	2,403,322	12	
b. Total number of contracts	-	22	20	19	61	10	
5. Total Dollars Encumbered	\$665,219	\$6,998,410	\$6,978,519	\$4,549,785	\$19,191,933	100%	
6. Total Number of Contracts	13	160	214	247	634	100%	

*Dollars encumbered include amendments. 1977-78 contracts include contracts approved by June 30, 1978.

Legislative Counsel of California

BION M. GREGORY

Sacramento, California
October 25, 1978

Mr. John H. Williams, Auditor General
Office of the Auditor General
925 L Street, Suite 750
Sacramento, CA 95814

California Energy Resources Conservation
and Development Commission: Contracts - #15968

Dear Mr. Williams:

QUESTION

You have informed us that the State Energy Resources Conservation and Development Commission has entered into written agreements for, and authorized the commencement of, professional services; and that such contracts have not been approved by the Department of General Services.

You have asked whether, under such circumstances, the State of California is liable for the value of the services performed, even if the contractors are unaware of the requirement that such contracts must first be approved by the Department of General Services.

OPINION

The state is not legally liable for the value of services rendered under written agreements between the State Energy Resources Conservation and Development Commission and contractors if they have not been approved by the Department of General Services. This is so even

GERALD ROSS ADAMS
DAVID D. ALVES
MARTIN L. ANDERSON
PAUL ANTILLA
CHARLES C. ASBILL
JAMES L. ASHFORD
JANICE R. BROWN
ALICE V. COLLINS
JOHN CORZINE
BEN E. DALE
CLINTON J. DEWITT
C. DAVID DICKERSON
FRANCES S. DORBIN
ROBERT CULLEN DUFFY
CARL ELDER
LAWRENCE H. FEIN
JOHN FOSSETTE
CLAY FULLER
KATHLEEN E. GNEKOW
ALVIN D. GRESS
ROBERT D. GRONKE
JAMES W. HEINZER
THOMAS R. HEUER
JACK I. HORTON
EILEEN K. JENKINS
MICHAEL J. KERSTEN
L. DOUGLAS KINNEY
VICTOR KOZIELSKI
JAMES A. MARSALA
PETER F. MELNICOE
ROBERT G. MILLER
JOHN A. MOGER
VERNE L. OLIVER
EUGENE L. PAINE
MARGUERITE ROTH
MARY SHAW
WILLIAM K. STARK
MICHAEL H. UPSON
CHRISTOPHER J. WEI
DANIEL A. WEITZMAN
THOMAS D. WHELAN
JIMMIE WING
SUZANNE M. WOOD
CHRISTOPHER ZIRKLE
DEPUTIES

if the contractors are unaware of the requirement that such contracts be first approved by the Department of General Services. However, the contractors may file a claim with the State Board of Control or the Legislature for payment of the claim.

ANALYSIS

Initially, we note that the provisions of law relating to the State Energy Resources Conservation and Development Commission* are contained in Chapter 3 (commencing with Section 25200) of Division 15 of the Public Resources Code. The Energy Commission is authorized to enter into contracts for professional services if such work or services cannot be satisfactorily performed by the employees of the Energy Commission or by any other state agency (subd. (b), Sec. 25218, P.R.C.).

However, all contracts entered into by a state agency for services must first be approved in writing by the Department of General Services (Sec. 14780, Gov. C.). Section 14780 of the Government Code provides, in pertinent part:

"14780. All contracts entered into by any state agency for ... services, whether or not the same involve the furnishing or use of equipment, materials or supplies or are performed by an independent contractor, ... are of no effect unless and until approved by the Department of General Services."

Moreover, paragraph 3 of Section 1204 of the State Administrative Manual, which is published by the Department of General Services, provides that:

"Except in emergency cases to protect human life or state property, agencies must submit each contract in time for the Department of General Services to approve it prior to commencement of work. Contracts received in General Services after the period of performance has commenced will not be approved."

* Hereafter referred to as the Energy Commission.

It has been stated that the purpose of the statutory requirement of independent written approval by the Department of General Services is the protection of the public from improvident or secret actions in public affairs (State of Calif. v. Haslett Co., 45 Cal. App. 3d 252, 257).

Thus, if the agreements entered into by the Energy Commission and the contracts were entered into without the required approval by the Department of General Services, they are void and are unenforceable (see Miller v. McKinnon, 20 Cal. 2d 83, 88-89; Greer v. Hitchcock, 271 Cal. App. 2d 334, 337).

It may be contended, however, that even if the contractors are unable to hold the state liable under the express contract, they may recover the reasonable value of the services rendered on an "implied contract" or "quantum meruit" theory. Where there is an invalid or unenforceable express contract and one person has rendered services to another from which the latter derives benefit, the courts have allowed recovery for the value of services rendered on a quasi-contractual basis (Rotea v. Izuel, 14 Cal. 2d 605, 608; Bogan v. Wiley, 72 Cal. App. 2d 533, 536).

However, it is a general principle with respect to contracts with public agencies that ordinarily no recovery in quasi-contract can be had for work performed under a void public contract (Zottman v. San Francisco, 20 Cal. 96; Reams v. Cooley, 171 Cal. 150, 153-154; Miller v. McKinnon, supra, 88-89).

In Miller v. McKinnon, supra, a municipality entered into an agreement with a contractor to perform certain construction projects without complying with the statutory requirements of advertising for bids and competitive bidding. The court stated that a contract made without compliance with the statute is void and unenforceable as being in excess of the agency's power. It went on to state:

"Certain general principles have become well established with respect to municipal contracts, and a brief statement of these principles will serve to narrow the field of our inquiry here. The most important one is that contracts wholly beyond the

powers of a municipality are void. They cannot be ratified; no estoppel to deny their validity can be invoked against the municipality; and ordinarily no recovery in quasi contract can be had for work performed under them. It is also settled that the mode of contracting, as prescribed by the municipal charter, is the measure of the power to contract; and a contract made in disregard of the prescribed mode is unenforceable. . . . And even though the person with whom the contract was made has supplied labor and materials in the performance of the contract and the public agency has received the benefits thereof, he has no right of action to recover in quantum meruit the reasonable value thereof. . . . The competitive bidding requirement is founded upon a salutary public policy declared by the legislature to protect the taxpayers from fraud, corruption, and carelessness on the part of public officials and the waste and dissipation of public funds. . . . Persons dealing with the public agency are presumed to know the law with respect to the requirement of competitive bidding and act at their peril." (Miller v. McKinnon, supra, 88-89.)

Similarly, in Reams v. Cooley, supra, the appellant sought to compel the superintendent of schools to reimburse appellant for the cost of plaster work performed by appellant on a school building. The contract was awarded to the appellant without competitive bidding and the court denied recovery, stating:

"Undoubtedly, a school board, like a municipal corporation, may, under some circumstances, be held liable upon an implied contract for benefits received by it, but this rule of implied liability is applied only in those cases where the board or municipality is given the general power to contract with reference to a subject matter and the express contract which it has assumed to enter into in pursuance of this general power is rendered invalid for some mere irregularity or some

invalidity in the execution thereof; where the form or manner of entering into a contract is not violative of any statutory restriction upon the general power of the governing body to contract nor violative of public policy. In the absence of such restriction on the mode or manner of contracting the same general rule applies to such inferior political bodies as to individuals and the former will be held responsible on an implied contract for the payment of benefits it receives under an illegal express contract not prohibited by law. . . . But while the doctrine of implied liability applies where general power to contract on a subject exists and the form or manner of doing so is not expressly provided by charter or statute, the decided weight of authority is to the effect that when by statute the power of the board or municipality to make a contract is limited to a certain prescribed method of doing so and any other method of doing it is expressly or impliedly prohibited, no implied liability can arise for benefits received under a contract made in violation of the particularly prescribed statutory mode. Under such circumstances the express contract attempted to be made is not invalid merely by reason of some irregularity or some invalidity in the exercise of a general power to contract, but the contract is void because the statute prescribes the only method in which a valid contract can be made, and the adoption of the prescribed mode is a jurisdictional prerequisite to the exercise of the power to contract at all and can be exercised in no other manner so as to incur any liability on the part of the municipality. Where the statute prescribes the only mode by which the power to contract shall be exercised, the mode is the measure of the power. A contract made otherwise than as so prescribed is not binding or obligatory as a contract and the doctrine of implied liability has no application in such cases." (Reams v. Cooley, supra, 153-154.)

This general rule denying recovery for services rendered under a void public contract is applicable to the present situation. Section 14780 of the Government Code prescribes the method by which the power to contract is to be exercised. Section 14780 requires written approval by the Department of General Services. It is the established rule that the mode of contracting vested in a state agency is the measure of its power to contract and a contract made in disregard of the established mode is invalid (Miller v. McKinnon, supra, 88-89; Greer v. Hitchcock, supra, 337).

Although the cited cases have dealt with the situation where the public agency has failed to comply with the advertising or competitive bid requirements, the policy reasons for denying any recovery in competitive bidding situations is also applicable to the present situation. The public policy behind the competitive bidding requirement is to protect the taxpayer from fraud, corruption, and carelessness on the part of public officials and waste and dissipation of public funds (Miller v. McKinnon, supra, 88). There is a similar policy behind the requirement that all contracts be approved by the Department of General Services. As previously indicated, the courts have held that the purpose of the approval requirement is to protect the public from improvident or secret actions in public affairs (State of Calif. v. Haslett Co., supra).

Permitting a contractor to recover where the statutory requirement has been disregarded would clearly thwart the public policy. Public agencies may then enter into agreements without gaining approval from the Department of General Services with the knowledge that the contractor will still be reimbursed for the value of the services rendered.

We are of the opinion that the courts would not allow recovery under a quasi-contract basis.

It does not matter that the contractor is unaware of the requirement that such contracts be approved by the Department of General Services. Persons dealing with a public agency are presumed to know the law (Miller v. McKinnon, supra, at 89).

Moreover, under the facts presented to us, the written agreement between the Energy Commission and the contractor contains a provision stating that the agreement

Mr. John H. Williams - p. 7 - #15968

is not binding unless it is approved by the appropriate authorized state officials and that funds expended on the agreement prior to approval may not be reimbursable in the event the state should subsequently disapprove the agreement.

However, although a contractor may be barred from recovering under the law, he may present his claim for money against the state in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. Under the present claims procedures, the State Board of Control is authorized to examine and adjust claims against the state and to report and make recommendations on these claims to the Legislature (Sec. 912.8, Gov. C.). The Legislature may then appropriate funds to the Secretary of the State Board of Control for the payment of such claims. The secretary may thereafter withdraw this money from the Treasury and pay those claims against the state which the Legislature has approved.

Moreover, the Legislature may make a direct appropriation for the payment of a claim (Sec. 905.4, Gov. C.). The Legislature may include the claim in the budget bill or a claim bill without first submitting the claim to the Board of Control, and it is doubtful that the courts would invalidate the Legislature's action (see Dittus v. Cranston, 53 Cal. 2d 284).

We, therefore, conclude that an agreement entered into between the Energy Commission and a contractor for professional services which has not been approved by the Department of General Services is void, and the contractor may not recover for damages under the contract or for the value of services rendered under a quasi-contractual basis. However, the contractor may file a claim with the State Board of Control or directly with the Legislature for payment of the claim.

Very truly yours,

Bion M. Gregory
Legislative Counsel

By
Christopher J. Wei
Deputy Legislative Counsel

CJW:jw

B-7

cc: Honorable Richard Robinson, Chairman

SUMMARY OF SERCDC CONTRACT PRODUCTS
AND FUNDS ENCUMBERED PER FISCAL YEAR

Contract Products	Consulting: Existing Data	Consulting: New Data	Consulting: Staff Assistance	Regulatory: Hearings and Testimony	Regulatory: Developmental	Feasibility Study	Public Education	Demonstration Projects	Administration	Implementation Research Projects	Total
Number of Contracts Per Fiscal Year											
1974-75	1	-	1	-	1	1	-	-	8	1	
1975-76	26	25	24	45	27	14	3	9	29	3	
1976-77	43	30	46	200	27	14	9	20	20	5	
1977-78	42	41	62	90	23	8	17	9	27	18	969
Total Contracts Per Product	112	96	133	335	78	37	29	38	84	27	100%
Percentage of Total Contracts	12%	10%	14%	35%	8%	4%	3%	4%	9%	3%	
Dollars Spent Per Fiscal Year											
1974-75	\$ 3,200	\$ -0-	\$ 3,301	\$ -0-	\$ 224,086	\$ 8,500	\$ -0-	\$ -0-	\$ 106,969	\$ 319,163	\$ 665,219
1975-76	881,072	2,190,575	140,600	63,025	954,421	752,093	62,658	311,948	1,685,483	19,560	7,061,435
1976-77	507,967	3,152,527	489,537	609,557	424,990	702,911	77,866	836,799	555,093	230,828	7,588,075
1977-78	576,663	671,119	458,680	203,159	190,266	363,863	268,095	423,587	695,594	901,917	4,752,943
	\$1,968,902	\$6,014,221	\$1,092,118	\$875,741	\$1,793,763	\$1,827,367	\$408,619	\$1,572,334	\$3,043,139	\$1,471,468	20,067,672
Percentage of Total Contract Dollars	9.8%	30.0%	5.4%	4.4%	8.9%	9.1%	2.0%	7.8%	15.2%	7.3%	100%

Definition of Contract Products

- (1) Consulting: Existing Data--Compilation and analyses of existing data for reports.
- (2) Consulting: New Data--Conceptual development of new data or a new approach to existing subjects.
- (3) Consulting: Staff Assistance--Direct input to programs and staff. Generally, informational staff meetings.
- (4) Regulatory: Hearings and Testimony--May involve hearing preparation, testimony or participation. Includes advisory committee participation.
- (5) Regulatory: Developmental--Development of draft regulations and methodologies for use in regulatory functions and processes.
- (6) Feasibility Studies--Analyze and evaluate the benefits of potential studies or projects.
- (7) Public Education--Displays, brochures, films or the like with an educational nature.
- (8) Demonstration Projects--Design and development of hardware products or models which may include test projects.
- (9) Administration--Involves staff training, development of data bases for computer programs, or administrative contracts.
- (10) Implementation of Research Projects--Implementation of research subjects developed by the SERCDC.

*Due to rounding, percents total less or more than 100%.

SERCDC PROGRAM AND ELEMENT CONTRACT EXPENDITURES

Program/ Element	Title	1974-75		1975-76		1976-77		1977-78		Totals	
		Number of Contracts	\$ Amount	Number of Contracts	\$ Amount	Number of Contracts	\$ Amount	Number of Contracts	\$ Amount	Number of Contracts	\$ Amount
1	Commission and Administration Program										
1/A	Regulatory Support Element	-	-0-	2	\$ 5,300	1	\$ 1,050	5	\$ 79,144	8	\$ 85,494
1/B	Administrative Support Element	9	\$115,469	33	1,530,768	30	1,054,155	27	1,223,139	99	3,923,531
1/C	Program Planning and Mgmt. Element	-	-0-	-	-0-	-	-0-	37	15,893	37	15,893
	Subtotals	9	\$115,469	35	\$1,536,068	31	\$1,055,205	69	\$1,318,176	144	\$ 4,024,918
2	Power Plant Siting Program										
2/A	Licensing Element	-	-0-	18	\$ 368,962	69	\$ 427,894	39	\$ 187,158	126	\$ 984,014
2/B	Compliance Element	-	-0-	2	169,000	15	319,759	4	6,220	21	494,979
2/C	Energy and Electric Planning Element	-	-0-	45	2,025,099	26	725,281	26	280,344	97	3,030,724
2/D	Nuclear Element	-	-0-	6	112,116	65	1,798,887	20	134,831	91	2,045,834
	Subtotals	-	-0-	71	\$2,675,177	175	\$3,271,821	89	\$ 608,553	335	\$ 6,555,551
3	Energy Resources Conservation Program										
3/A	Building and Appliance Element	-	-0-	49	\$ 869,317	71	\$ 269,511	36	\$ 456,755	156	\$ 1,595,583
3/B	Industries and Utilities Element	-	-0-	6	41,965	40	513,188	37	558,819	83	1,113,972
3/C	Education and Tech. Assist. Element	2	\$ 6,501	7	32,860	21	438,444	14	285,808	44	763,613
3/D	Energy Contingency Planning Element	2	543,249	1	17,991	-	-0-	8	2,000	11	563,240
	Subtotals	4	\$549,750	63	\$ 962,133	132	\$1,211,143	95	\$1,303,382	294	\$ 4,036,408
4	New Resources and Technology Program										
4/A	Solar Element	-	-0-	20	\$1,180,047	30	\$ 612,943	55	\$ 695,279	105	\$ 2,488,269
4/B	Geothermal Element	-	-0-	6	358,479	18	482,004	13	32,530	37	873,013
4/C	Fuels Element	-	-0-	10	349,531	11	219,991	9	434,663	30	1,004,185
4/D	Energy Systems Integration Element	-	-0-	-	-0-	17	724,967	5	255,064	22	980,031
	Subtotals	-	-0-	36	\$1,888,057	76	\$2,039,905	82	\$1,417,536	194	\$ 5,345,498
	TOTALS	13	\$665,219	205	\$7,061,435	414	\$7,588,074	335	\$4,647,647	967	\$19,962,375

SERCDC DIVISION CONTRACT EXPENDITURES FOR 1976-77 AND 1977-78

<u>Divisions</u>	<u>Commissioner's Office^{1/}</u>	<u>Executive Director's Office^{2/}</u>	<u>Administrative Services</u>	<u>Assessments</u>	<u>Conservation</u>	<u>Alternatives</u>	<u>Facility Siting^{3/}</u>	<u>Total</u>
<u>Fiscal Year 1976-77</u>								
Contract Dollars	\$131,355	\$991,188	\$123,647	\$777,682	\$1,221,143	\$2,018,366	\$2,321,693	\$7,585,075
Percentage of Total Dollars	1.7%	13.0%	1.6%	10.3%	16.1%	26.6%	30.6%	100%
Number of Contracts	7	49	9	31	132	75	110	413
Percentage of Total Contracts	1.7%	11.7%	2.2%	7.5%	31.9%	18.2%	26.8%	100%
<u>Fiscal Year 1977-78</u>								
Contract Dollars	\$ 24,880	\$255,836	\$575,447	\$224,619	\$1,906,903	\$1,390,900	\$ 374,359	\$4,752,944
Percentage of Total	.5%	5.4%	12.1%	4.7%	40.1%	29.3%	7.9%	100%
Number of Contracts	17	16	15	21	100	107	61	337
Percentage of Total Contracts	5.0%	4.7%	4.5%	6.2%	29.7%	31.8%	18.1%	100%

^{1/} Commissioner's Office, Public Advisor, General Counsel^{2/} Executive Director, Policy and Program Evaluation, Governmental Affairs, Public Information Offices^{3/} Facility Siting, Nuclear Office

SUMMARY OF SOLE SOURCE CONTRACTS WITHOUT JUSTIFICATION
BY PRODUCT AND PROGRAM FOR FISCAL YEAR 1974-75

Product Type*	Program					Total Sole Source Contracts for Fiscal Year	Percentage
	Commission Administration	Power Plant Siting	Energy Resources Conservation	New Resources and Technology	Total		
Product 1: a) Number b) \$ Amount	- \$ -0-	- \$ -0-	1 \$ 3,200	- \$ -0-	1 \$ 3,200		
Product 2: a) Number b) \$ Amount	- -0-	- -0-	- -0-	- -0-	- -0-		
Product 3: a) Number b) \$ Amount	- -0-	- -0-	1 \$ 3,301	- -0-	1 \$ 3,301		
Product 4: a) Number b) \$ Amount	- -0-	- -0-	- -0-	- -0-	- -0-		
Product 5: a) Number b) \$ Amount	- -0-	- -0-	- -0-	- -0-	- -0-		
Product 6: a) Number b) \$ Amount	- -0-	- -0-	- -0-	- -0-	- -0-		
Product 7: a) Number b) \$ Amount	- -0-	- -0-	- -0-	- -0-	- -0-		
Product 8: a) Number b) \$ Amount	- -0-	- -0-	- -0-	- -0-	- -0-		
Product 9: a) Number b) \$ Amount	3 \$53,525	- -0-	- -0-	- -0-	3 \$53,525		
Product 10: a) Number b) \$ Amount	- -0-	- -0-	- -0-	- -0-	- -0-		
TOTALS	a) Number b) \$ Amount	- -0-	2 \$ 6,501	- -0-	5 \$60,026	6	83%
TOTALS (excluding a) Number Product #4) b) \$ Amount	3 \$53,525	- -0-	2 \$ 6,501	- -0-	5 \$60,026	6	83%

* Definition of Contract Products

- (1) Consulting: Existing Data--Compilation and analyses of existing data for reports.
- (2) Consulting: New Data--Conceptual development of new data or a new approach to existing subjects.
- (3) Consulting: Staff Assistance--Direct input to programs and staff. Generally, informational staff meetings.
- (4) Regulatory: Hearings and Testimony--May involve hearing preparation, testimony or participation. Includes advisory committee participation.
- (5) Regulatory: Developmental--Development of draft regulations and methodologies for use in regulatory functions and processes.
- (6) Feasibility Studies--Analyze and evaluate the benefits of potential studies or projects.
- (7) Public Education--Displays, brochures, films or the like with an educational nature.
- (8) Demonstration Projects--Design and development of hardware products or models which may include test projects.
- (9) Administration--Involves staff training, development of data bases for computer programs, or administrative contracts.
- (10) Implementation of Research Projects--Implementation of research subjects developed by the SERCDC.

SUMMARY OF SOLE SOURCE CONTRACTS WITHOUT JUSTIFICATION
BY PRODUCT AND PROGRAM FOR FISCAL YEAR 1975-76

Product Type*	Program					Total Sole Source Contracts for Fiscal Year	Percentage
	Commission Administration	Power Plant Siting	Energy Resources Conservation	New Resources and Technology	Total		
Product 1: a) Number b) \$ Amount	- \$ -0-	4 \$ 28,841	- -0-	1 \$ 5,000	5 \$ 33,841		
Product 2: a) Number b) \$ Amount	- -0-	2 9,793	1 12,000	- -0-	3 21,793		
Product 3: a) Number b) \$ Amount	5 6,285	5 6,779	1 4,990	4 2,261	15 20,315		
Product 4: a) Number b) \$ Amount	- -0-	12 15,850	31 42,025	- -0-	43 57,875		
Product 5: a) Number b) \$ Amount	- -0-	- -0-	- -0-	- -0-	- -0-		
Product 6: a) Number b) \$ Amount	- -0-	- -0-	- -0-	3 3,200	3 3,200		
Product 7: a) Number b) \$ Amount	- -0-	- -0-	- -0-	- -0-	- -0-		
Product 8: a) Number b) \$ Amount	- -0-	1 50,000	- -0-	1 5,000	2 55,000		
Product 9: a) Number b) \$ Amount	13 1,098,866	- -0-	- -0-	- -0-	13 \$1,098,866		
Product 10: a) Number b) \$ Amount	- -0-	- -0-	- -0-	- -0-	- -0-		
TOTALS	18 \$1,105,151	24 \$111,263	33 \$59,015	9 \$15,461	84 \$1,290,890	112	75%
TOTALS (excluding a) Number Product #4) b) \$ Amount	18 \$1,105,151	12 \$ 95,413	2 \$16,990	9 \$15,461	41 \$1,233,015	67	61%

* Definition of Contract Products

- (1) Consulting: Existing Data--Compilation and analyses of existing data for reports.
- (2) Consulting: New Data--Conceptual development of new data or a new approach to existing subjects.
- (3) Consulting: Staff Assistance--Direct input to programs and staff. Generally, informational staff meetings.
- (4) Regulatory: Hearings and Testimony--May involve hearing preparation, testimony or participation. Includes advisory committee participation.
- (5) Regulatory: Developmental--Development of draft regulations and methodologies for use in regulatory functions and processes.
- (6) Feasibility Studies--Analyze and evaluate the benefits of potential studies or projects.
- (7) Public Education--Displays, brochures, films or the like with an educational nature.
- (8) Demonstration Projects--Design and development of hardware products or models which may include test projects.
- (9) Administration--Involves staff training, development of data bases for computer programs, or administrative contracts.
- (10) Implementation of Research Projects--Implementation of research subjects developed by the SERCDG.

SUMMARY OF SOLE SOURCE CONTRACTS WITHOUT JUSTIFICATION
BY PRODUCT AND PROGRAM FOR FISCAL YEAR 1976-77

Product Type*	Program					Total Sole Source Contracts for Fiscal Year	Percentage
	Commission Administration	Power Plant Siting	Energy Resources Conservation	New Resources and Technology	Total		
Product 1: a) Number b) \$ Amount	\$ - -0-	\$ 4,925 4	\$ 3,900 1	\$ 9,135 6	\$ 17,960 11		
Product 2: a) Number b) \$ Amount	4,987 1	1,031,072 3	4,998 1	1,400 1	1,042,457 6		
Product 3: a) Number b) \$ Amount	3,000 1	5,600 3	3,465 4	25,131 8	37,196 16		
Product 4: a) Number b) \$ Amount	8,200 7	93,590 31	40,660 43	4,850 1	147,300 82		
Product 5: a) Number b) \$ Amount	- -0-	96,000 1	39,500 18	24,540 2	160,040 21		
Product 6: a) Number b) \$ Amount	- -0-	- -0-	30,000 1	5,000 1	35,000 2		
Product 7: a) Number b) \$ Amount	- -0-	- -0-	31,554 6	- -0-	31,554 6		
Product 8: a) Number b) \$ Amount	- -0-	- -0-	- -0-	17,000 1	17,000 1		
Product 9: a) Number b) \$ Amount	11,800 2	77 1	- -0-	585 1	12,462 4		
Product 10: a) Number b) \$ Amount	- -0-	- -0-	5,000 1	- -0-	5,000 1		
TOTALS	27,987 11	1,231,264 43	159,077 75	87,641 21	1,505,969 150	327	46%
TOTALS (excluding a) Number Product #4) b) \$ Amount	19,787 4	1,137,674 12	118,417 32	82,791 20	1,358,669 68	134	51%

* Definition of Contract Products

- (1) Consulting: Existing Data--Compilation and analyses of existing data for reports.
- (2) Consulting: New Data--Conceptual development of new data or a new approach to existing subjects.
- (3) Consulting: Staff Assistance--Direct input to programs and staff. Generally, informational staff meetings.
- (4) Regulatory: Hearings and Testimony--May involve hearing preparation, testimony or participation. Includes advisory committee participation.
- (5) Regulatory: Developmental--Development of draft regulations and methodologies for use in regulatory functions and processes.
- (6) Feasibility Studies--Analyze and evaluate the benefits of potential studies or projects.
- (7) Public Education--Displays, brochures, films or the like with an educational nature.
- (8) Demonstration Projects--Design and development of hardware products or models which may include test projects.
- (9) Administration--Involves staff training, development of data bases for computer programs, or administrative contracts.
- (10) Implementation of Research Projects--Implementation of research subjects developed by the SERDC.

SUMMARY OF SOLE SOURCE CONTRACTS WITHOUT JUSTIFICATION
BY PRODUCT AND PROGRAM FOR FISCAL YEAR 1977-78

Product Type*	Program					Total Sole Source Contracts for Fiscal Year	Percentage
	Commission Administration	Power Plant Siting	Energy Resources Conservation	New Resources and Technology	Total		
Product 1: a) Number b) \$ Amount	\$ - -0-	1 \$24,453	1 \$4,900	1 \$ 5,000	3 \$ 34,353		
Product 2: a) Number b) \$ Amount	- -0-	- -0-	- -0-	2 74,951	2 74,951		
Product 3: a) Number b) \$ Amount	9 \$ 11,093	5 97,393	- -0-	6 6,055	20 114,541		
Product 4: a) Number b) \$ Amount	26 4,262	27 39,782	- -0-	9 3,681	62 47,725		
Product 5: a) Number b) \$ Amount	1 1,800	1 1,500	- -0-	10 17,530	12 20,830		
Product 6: a) Number b) \$ Amount	- -0-	- -0-	- -0-	- -0-	- -0-		
Product 7: a) Number b) \$ Amount	1 22,000	- -0-	- -0-	- -0-	1 22,000		
Product 8: a) Number b) \$ Amount	- -0-	- -0-	1 230	- -0-	1 230		
Product 9: a) Number b) \$ Amount	2 24,760	- -0-	- -0-	- -0-	2 24,760		
Product 10: a) Number b) \$ Amount	1 490,000	- -0-	- -0-	- -0-	1 490,000		
TOTALS	40 \$553,915	34 \$163,128	2 \$5,130	28 \$107,217	104 \$829,390	258	40%
TOTALS (excluding a) Number Product #4) b) \$ Amount	14 \$549,653	7 \$123,346	2 \$5,130	19 \$103,536	42 \$781,665	180	23%

* Definition of Contract Products

- (1) Consulting: Existing Data--Compilation and analyses of existing data for reports.
- (2) Consulting: New Data--Conceptual development and input of new data or a new approach to existing subjects.
- (3) Consulting: Staff Assistance--Direct input to programs and staff. Generally, informational staff meetings.
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- (10) Implementation of Research Projects--Implementation of research subjects developed by the SERCDC.

TYPE OF SERCDC CONTRACT AMENDMENTS

APPENDIX G

Year and Program	Total Number of Amendments	Amendments for Time Extensions Only	Amendments for Dollars Augmentation Only	Amendments for Time and Dollars Changes in Scope Only	Amendments for Time and Scope Only	Amendments for Time and Scope Dollars and Scope	Amendments for Time, Dollars and Scope
1974-75							
Program I Commission and Administration	2	-	2	-	-	-	-
Program II Power Plant Siting	-	-	-	-	-	-	-
Program III Energy Resources Conservation	5	1	-	1	1	-	2
Program IV New Resources and Technologies	-	-	-	-	-	-	-
SUBTOTAL	7	1	2	1	1	-	2
1975-76							
Program I	14	1	6	5	2	-	-
Program II	31	22	-	2	3	3	1
Program III	21	14	1	1	1	3	1
Program IV	28	20	1	2	2	2	-
SUBTOTAL	94	57	8	10	8	8	2
1976-77							
Program I	7	1	3	-	-	2	1
Program II	55	21	5	17	4	3	4
Program III	54	34	13	2	2	1	2
Program IV	28	18	2	-	2	3	2
SUBTOTAL	44	74	23	19	8	9	9
1977-78							
Program I	18	4	7	1	1	4	1
Program II	16	3	1	3	-	7	2
Program III	4	3	1	-	-	-	-
Program IV	10	8	1	-	1	-	-
SUBTOTAL	48	18	10	4	2	11	3
TOTAL AMENDMENTS TO CONTRACTS	93	50	43	34	18	4	16
PERCENT OF TOTAL	100	51%	15%	12%	6%	1%	5%

Office of the Auditor General

cc: Members of the Legislature
Office of the Governor
Office of the Lieutenant Governor
Secretary of State
State Controller
State Treasurer
Legislative Analyst
Director of Finance
Assembly Office of Research
Senate Office of Research
Assembly Majority/Minority Consultants
Senate Democratic/Republican Caucus
California State Department Heads
Capitol Press Corps